

SENATE BILL No. 454

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-16.6.

Synopsis: Broadband deployment partnerships and account. Establishes the broadband deployment account in the state general fund to make digital subscriber line (DSL) Internet service available throughout Indiana. Requires the utility regulatory commission (IURC) to administer the account. Allows local exchange carriers and certain nonprofit, community, and governmental entities to form a broadband deployment partnership and apply to the IURC for grants or loans from the account. Provides that a partnership must include at least one local exchange carrier. Provides that grants and loans from the account may be used by a partnership to purchase, acquire, construct, expand, improve, or maintain DSL equipment in underserved areas. Allows the IURC to adopt rules to do the following: (1) Designate areas in Indiana as underserved areas with respect to DSL service. (2) Establish requirements for grants and loans from the account. (3) Allow local exchange carriers to collect a universal DSL service charge on their periodic billings for remittance to the IURC and deposit and in the account. Requires the regulatory flexibility committee to annually study the status of broadband service in Indiana and report any recommendations to the legislative council. Requires the IURC to annually report to the committee on broadband service in Indiana.

Effective: Upon passage; July 1, 2004.

Merritt

January 12, 2004, read first time and referred to Committee on Utility and Regulatory Affairs.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 454

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-1-16.6 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]:
4 **Chapter 16.6. Broadband Deployment Partnerships and**
5 **Account**
6 **Sec. 1. As used in this chapter, "account" refers to the**
7 **broadband deployment account established by section 14 of this**
8 **chapter.**
9 **Sec. 2. As used in this chapter, "broadband service" means a**
10 **connection to the Internet at a rate of:**
11 **(1) at least two hundred (200) kilobits per second downstream**
12 **to a subscriber; and**
13 **(2) at least one hundred twenty-five (125) kilobits per second**
14 **from the subscriber.**
15 **Sec. 3. As used in this chapter, "committee" refers to the**
16 **regulatory flexibility committee established by IC 8-1-2.6-4.**
17 **Sec. 4. As used in this chapter, "DSL service" refers to**

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broadband service provided over digital subscriber lines that are owned or leased by eligible carriers.

Sec. 5. (a) As used in this chapter, "eligible broadband equipment" means any equipment, property, or infrastructure that is:

- (1) located in Indiana;
- (2) used to provide DSL service to subscribers in Indiana; and
- (3) located outside a subscriber's premises.

The term includes wire centers and switching offices.

(b) The term does not include computers, modems, set top boxes, and related items used by a subscriber to facilitate broadband connection within the subscriber's home or business.

Sec. 6. As used in this chapter, "eligible carrier" means a local exchange carrier or an affiliate of a local exchange carrier.

Sec. 7. As used in this chapter, "eligible partner" means any of the following:

- (1) An eligible carrier.
- (2) A community foundation or trust that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.
- (3) A nonprofit corporation organized under IC 23-17 and not described in subdivision (2).
- (4) A local economic development organization (as defined in IC 4-4-24-3).
- (5) An institution of higher education (as defined in IC 6-3-3-5(d)).
- (6) A school corporation.
- (7) A non-public school (as defined in IC 20-10.1-1-3).
- (8) A unit of local government.

Sec. 8. As used in this section, "local exchange access service" means the provision of access, through telephone exchange access lines or channels, to a local telecommunications network to effect the transfer of information.

Sec. 9. As used in this chapter, "local exchange carrier" means a telecommunications provider authorized by the commission to provide, among other services, local exchange access service in Indiana.

Sec. 10. As used in this chapter, "participating eligible carrier" means an eligible carrier that participates in a broadband deployment partnership with one (1) or more other eligible partners under section 13 of this chapter.

Sec. 11. As used in this chapter, "partnership" refers to a

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broadband deployment partnership created by two (2) or more eligible partners under section 13 of this chapter.

Sec. 12. As used in this chapter, "underserved area" means a geographic area in Indiana that is designated by the commission as lacking access to, or having only limited access to, DSL service.

Sec. 13. Two (2) or more eligible partners, at least one (1) of which must be an eligible carrier, may form a broadband deployment partnership to do any of the following:

(1) Apply to the commission for a grant or loan from the broadband deployment account established by section 14 of this chapter to do any of the following:

(A) Purchase, acquire, construct, expand, improve, or maintain eligible broadband equipment for deployment in one (1) or more underserved areas.

(B) With respect to any access lines owned by one (1) or more participating eligible carriers, make a certain percentage or number of the lines available to other local exchange carriers for the provision of DSL service in one (1) or more underserved areas.

(C) With respect to any wire centers or switching centers owned by one (1) or more participating eligible carriers, increase the percentage or number of the wire centers or switching centers that are equipped to provide DSL service in one (1) or more underserved areas.

If eligible broadband equipment is owned by one (1) eligible carrier and leased to another eligible carrier, a partnership that includes the owning eligible carrier or a partnership that includes the leasing eligible carrier, but not both, may apply for a grant or loan under clause (A) to improve or maintain the leased equipment.

(2) Solicit, generate, and obtain other sources of funding to undertake any of the activities for which grants or loans may sought under subdivision (1). Funds obtained under this subdivision may include funds from any of the following:

(A) Fundraising campaigns or lobbying efforts. Activities undertaken under this clause must be performed in compliance with any applicable state or federal laws.

(B) Grants or loans made available by any agency of the state or federal government, or any other public or private entity, for any of the activities described in subdivision (1).

(C) Contributions made by one (1) or more of the eligible partners.

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(3) Collaborate in the planning, development, and implementation of any of the activities described in subdivision (1).

(4) Perform any other act approved by the commission in a rule adopted under IC 4-22-2.

Sec. 14. (a) The broadband deployment account is established in the state general fund to make DSL service available throughout Indiana. The account shall be administered by the commission.

(b) The account consists of the following:

(1) Money appropriated to the account by the general assembly.

(2) Funds received from the federal government for the support of broadband service deployment in Indiana, including funds received under:

(A) 7 U.S.C. 1926(a)(20)(E); or

(B) any other federal program that provides funds to states for the deployment of broadband service in rural communities or underserved areas.

(3) Investment earnings, including interest, on money in the account.

(4) The proceeds of any universal DSL charge:

(A) authorized by the commission in a rule adopted under section 15(a)(3) of this chapter; and

(B) collected by eligible carriers and remitted to the commission.

(5) Money from any other source, including gifts, grants, or contributions to the account by an eligible partner or any other person or entity.

(c) Money in the account may be spent for the following purposes:

(1) Providing grants or loans to broadband deployment partnerships to perform any of the activities described in section 13(1) of this chapter.

(2) Any other activity designed to:

(A) increase the availability of, or speed the deployment of, DSL service in underserved areas;

(B) improve, expand, upgrade, or modernize existing infrastructure used to provide DSL service in Indiana; or

(C) ensure that DSL service is available to consumers in all regions of Indiana at just, reasonable, and comparable rates;

as determined by the commission.

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(d) The expenses of administering the account shall be paid from money in the account.

(e) The treasurer of state shall invest the money in the account not currently needed to meet the obligations of the account in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the account.

(f) Money in the account at the end of state a fiscal year does not revert to the state general fund.

Sec. 15. (a) The commission may adopt rules to do any of the following:

(1) Designate one (1) or more geographic areas in Indiana as underserved areas.

(2) Establish requirements for grants and loans to broadband deployment partnerships for the activities described in section 13(1) of chapter. Rules adopted under this subdivision may include the following:

(A) Limitations on any of the following:

(i) The amount that may be awarded as a grant or loan to any one (1) partnership.

(ii) The total amount of grants and loans to be awarded from the account during a state fiscal year. If the commission adopts a limitation described in this item, the commission may provide that grants or loans are to be awarded from the account on a first come, first served basis.

(B) Standards for establishing the following with respect to any loan from the account:

(i) The term of the loan.

(ii) The interest on the loan, if any.

(iii) The period, if any, during which a partnership may defer payment of all or part of the interest on or principal of the loan.

(iv) The obligations of the partnership upon default on the loan.

(C) Requirements that a partnership provide matching funds, in an amount determined by the commission, for any grant or loan awarded from the account.

(D) A requirement that if a grant or loan from the account is to be used to match federal money under a program designed to encourage the deployment of broadband service in rural communities or underserved areas, a partnership that applies for a grant or loan from the

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account must submit to the commission a copy of its application for the grant or loan under the federal program.

(E) Require, as a condition for awarding a grant or loan to a partnership, that a participating eligible carrier of the partnership do one (1) or more of the following:

(i) Provide DSL service in a certain percentage of, or in specified areas within, the participating eligible carrier's service area.

(ii) For a grant or loan for an activity described in section 13(1)(A) of this chapter, undertake an activity described in section 13(1)(B) or 13(1)(C) of this chapter, or both.

(3) Allow eligible carriers to collect a universal DSL service charge on their periodic billings to customers. A rule adopted under this subdivision must require an eligible carrier to remit the charges collected to the commission for deposit in the account under section 14(b)(4) of this chapter.

(4) Implement this chapter or any recommendations of the committee under section 16 of this chapter.

(b) Rules adopted by the commission under this section must be consistent with federal law and with the Federal Communications Commission's rules and regulations on the provision of broadband service.

Sec. 16. (a) The regulatory flexibility committee established by IC 8-1-2.6-4 to monitor changes in the telephone industry shall also monitor changes and competition in the provision of broadband service in Indiana.

(b) The commission shall, before October 1 of each year, prepare for presentation to the regulatory flexibility committee an analysis of the effects of regulation, competition, pricing, technology development and deployment, and other market forces or changes on the availability and quality of broadband service in Indiana. The analysis prepared under this subsection may be made in conjunction with the commission's annual report to the committee under IC 8-1-2.6-4.

(c) In addition to reviewing the commission's report prepared under subsection (b), the committee shall study the following issues and prepare a report on the committee's recommendations, if any, concerning the issues, to the legislative council before November 1 of each year:

(1) The effects of competition or changes in the broadband

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industry and the effect of the competition or changes on the rates for service in Indiana.

(2) The status of the availability and modernization of broadband facilities in Indiana and the incentives required to enhance this infrastructure.

(3) The effects of the availability and status of Indiana's broadband infrastructure on economic development in Indiana.

(4) The method of regulating broadband service providers in Indiana at the time of the report made under this subsection and the method's effectiveness.

(5) The socioeconomic effects of the pricing and affordability of broadband service in Indiana, including any disparities in the use of broadband service among Indiana residents that are attributable to socioeconomic factors.

(6) The effects of any relevant:

(A) legislation enacted by the United States Congress; or

(B) rules and regulations adopted by the Federal Communications Commission;

since the date of the committee's last report issued under this subsection.

(7) The availability of funding under 7 U.S.C. 1926(a)(20)(E) or other federal programs that provide funds to states for the deployment of broadband service in rural communities or underserved areas.

(8) All other broadband service issues the committee considers appropriate.

A report of the committee's recommendations under this subsection may include recommendations that the commission adopt certain rules concerning one (1) or more of the issues described in this subsection. A report to the legislative council must be in an electronic format under IC 5-14-6.

(d) The committee shall meet on the call of the co-chairs to study the broadband service issues described in subsection (c). The committee may consult any independent experts or consultants the committee considers appropriate to assist the committee in its review and study.

(e) The legislative services agency shall provide staff support to the committee.

(f) Each member of the committee is entitled to receive the same per diem, mileage, and travel allowances paid to individuals who serve as legislative members of interim study committees

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1 established by the legislative council.

2 SECTION 2. [EFFECTIVE UPON PASSAGE] (a) As used in this
3 SECTION, "commission" refers to the Indiana utility regulatory
4 commission.

5 (b) Notwithstanding IC 8-1-16.6-15, as added by this act, the
6 commission shall adopt any rules to implement IC 8-1-16.6, as
7 added by this act, in the same manner as emergency rules are
8 adopted under IC 4-22-2-37.1. Any rules adopted under this
9 SECTION must be adopted not later than June 1, 2004. A rule
10 adopted under this SECTION expires on the earlier of:

11 (1) the date the rule is adopted by the commission under
12 IC 4-22-2-24 through IC 4-22-2-36 to implement IC 8-1-16.6,
13 as added by this act; or

14 (2) January 1, 2006.

15 (c) This SECTION expires January 1, 2006.

16 SECTION 3. An emergency is declared for this act.

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